IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5986 OF 2005

1. Yerala Medical Trust & Research )
Centre, )
A Public Charitable Trust, )
duly registered under the provisions
of Public Trust Act, and having )
its Registered Office at )
Curry Road, Mumbai & Institutional)
Area, Sector 4, Kharghar, )
Navi Mumbai 410 210. )

2. Y.M.T. College of Management )
An Educational Institution, )
having its office at Institutional)
Area, Sector 4, Kharghar, )
Navi Mumbai 410 210. )..Petitioners.

Vs.

1. The Stae of Maharashtra )
(Notice to be served on the )
Govt.Pleader, Original Side, )
High Court, Mumbai) )

2. The Secretary to Government )
Higher Technical Education Dept. )
having its office at Mantralaya, )
Annexe Building, Mumbai 400 032. )

3. All India Council for )
Technical Education, )
A Statutory Body constituted under)
the provisions of AICTE and )
having its office at Indira Gandhi)
Complex, I.P.Estate, )
New Delhi 110 002. )

4. The Regional Officer, )
All India Council for Technical )
Education, Western Regional Office)
2nd floor, Industrial Assurance )
Building, Opp.Churchgate Railway )
Station, Veer Nariman Road, )
Mumbai 400 020. )

5. Union of India )
(Notice to be served at )
Law & Justice Department, Govt. of)

India, Income-Tax Building, )
New Marine Lines, Mumbai. )

6. The University of Mumbai )
having its office at Fort, )
Mumbai. )..Respondents.

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Mr.S.G.Surana for the Petitioners.
Mr.A.A.Kumbhakoni, Associate Advocate General with
Mr.P.I.Khemani, AGP for Respondent Nos.1 and 2.
Ms.Beena Menon for Respondent Nos.3 and 4.
Mr.R.A.Rodrigues for Respondent NO.6.

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**CORAM : F.I.REBELLO &**
**DR.D.Y.CHANDRACHUD, JJ.**
15th September, 2005.

**ORAL JUDGMENT: (Per F.I.REBELLO, J.)**

1. Rule. Heard forthwith.

2. The Petitioners had decided to open a new college for management i.e. M.B.A. Course. Permission for opening an MBA Course requires permission of Respondent No.3. Respondent No.3 has framed infrastructure norms for starting new

management colleges. Pursuant to the Petitioners submitting the necessary documents, the officers of Respondent Nos.1 and 2 visited the Petitioners' institution and submitted their report. Based on that report on 28th January, 2005 the State Government recommended the Petitioners' proposal for establishment of new technical institution to Respondent No.3. It is the case of the Petitioner that the State Government observed that the Petitioners are fulfilling all the necessary norms and conditions laid down by Respondent No.3. On the hearing given to the Petitioners by Respondent No.3, they appeared before the hearing committee of Respondent No.3 on 29th January, 2005. Respondent No.3 after considering the recommendations of the hearing committee and E.C. sub committee issued letters of intent to the Petitioners for establishment of new college of management on 10th February, 2005 and called on the Petitioners to pay a sum of Rs.15 lacs towards refundable performance guarantee fee and a sum of Rs.50,000/- towards visiting fees.

3. The Petitioners complied with the said directions and intimated the same by their letter

dated 23rd February, 2005. The Petitioners were awaiting further visit of the expert committee of Respondent No.3. It is the case of the Petitioners that Respondent No.3 on 11th April, 2005 without issuing show cause notice and without hearing the Petitioners by a letter withdrew the letter of intent dated 10th February, 2005 for reasons as set out therein. The Petitioners made several representations. As they did not hear from Respondent No.3, they were compelled to file Writ Petition, being Writ Petition 3559 of 2005 in May 2005. During the pendency of that Petition various directions were issued and subsequently, the Petition came to be disposed of by order dated June 30, 2005. A Division Bench of this Court noted the decision in Writ Petition 3916 of 2001 which has been disposed of on 17th September, 2001 that with effect from the academic year 2002-03 the AICTE shall communicate to the State Government before 30th June each year, the intake capacity of different colleges concerned in the State of Maharashtra and the intake capacity so determined shall not be changed thereafter. The Learned Bench observed that AICTE, Respondent No.3 had laid down a national calender/schedule for processing

applications for establishing new institutions for 2005-06 and that the national calendar commences from 20th December, 2004 with the submission of applications. The Court then observed that the last date for the completion of the second stage is 30th June, 2005 and AICTE having laid down the national calender, the Court was of the view that it would not be appropriate to issue a writ of mandamus to AICTE in regard to the completion of the second stage by a particular date. Having regard to all the circumstances, the Court observed that it would be appropriate if AICTE considers whether the applications by the Petitioners for the current year 2005-06 should be processed further for this year or whether it should be deferred for the next academic year and this matter must lie in the discretion of the expert body. This Court in its observations observed that it hoped and trusted that AICTE will arrive at its decision guided by considerations of fair and just treatment in accordance with law. There are certain other observations which we need not advert to as the Petition can be disposed of by issuing various directions.

4. The Petitioners contend that on 30th June, 2005 they made a representation and requested Respondent No.3 to send their experts and to comply with the directions and/or orders passed by this Court in Writ Petition 3559 of 2005. The Petitioners contend that this Court proceeded on the basis of the assertion of Respondent No.3 that they had laid down a national calender for processing the applications for establishment of new institutions for the academic year 2005-06. It is pointed out that on the contrary, Respondent No.3 had already decided to change the national calender and decided to resort for ongoing approval and process and therefore issued public notice in the Times of India dated 31st July, 2005 and invited applications from the institutions for the academic year 2005-06 on or before 15th August, 2005. Based on that, the Petitioners made a representation on 5th August, 2005 and requested Respondent No.3 to send the expert committee and issue permission/ approval to the Petitioners for the academic year 2005-06. The expert committee visited the Petitioners' institution and found that the Petitioners have complied with all the requirements and the Petitioners are having

infrastructure which are necessary for running M.B.A. College. Respondent No.3, however, without considering the proposal for establishing new management college for the academic year 2005-06 granted permission/ approval for the academic year 2006-07 on the ground that this was in view of the judgment of this Court in Writ Petition 3916 of 2001. It is the case of the Petitioners that they were not parties to this writ petition.

On behalf of the Petitioners it is submitted that considering the notification dated 31st July, 2005, issued by Respondent No.3, inviting applications on or before 16th August, 2005 for opening of new institutions for the academic year 2005-06 the Petitioners had satisfied the necessary criteria, and as such Respondent No.3 was bound to grant permission and the failure to grant permission would be contrary to the order of this Court dated 30th June, 2005 in Writ Petition 3559 of 2005.

5. Respondent No.3 have put in their appearance. On behalf of Respondent No.3, learned counsel points out that they had addressed a letter dated 7th July, 2005 to the Principal Secretary,

Higher and Technical Education, State of Maharashtra. They therein had set out the procedure involved and which would take about 20-30 days. Attention was also invited to the judgment of this Court in Writ Petition 3916 of 2001 that all decisions regarding course and intake will be taken on 30th June every year and further considering 20-30 days time to process the above case, the State Government was requested to indicate whether it is possible to initiate admission process for 2005-06 in case the above case is considered for approval by AICTE. The Secretary was also informed that if AICTE does not receive any reply from the State Government, in that regard within 15 days, the case will be processed only for 2006-07. Respondent No.3 thereafter by a letter dated 29th August, 2005 addressed to the Secretary, Higher and Technical Education with copy endorsed to the Petitioners bearing in mind the ratio of the judgment of this Court in Writ Petition 3916 of 2001, granted approval to the establishment of a new college for the academic year 2006-07. Various conditions have been imposed, of which Condition No.1 is that the institution must have affiliation to a University

before making admissions. In the absence of such affiliation, letter of approval shall be treated as withdrawn. Secondly, the approval course shall commence as per the academic calender of affiliating university and if the letter of approval is received after the closing date of National level Central Counselling for admissions in the concerned State/ Union Territory, the letter of approval will not be valid for making any admission during the above specified academic year and shall be treated as withdrawn. It is not necessary for us to refer to the other conditions.

6. We have also heard learned counsel for the University. Our attention is invited to Ordinance 116. Ordinance 116 are the terms of various faculties. In so far as the terms for the first year of the D.M.S. and M.M.S. courses are as under:

First Term -1st August to 6th December)Both days
Second Term -2nd January to 2nd May )inclusive

Counsel for both Respondent No.3 as well as Respondent No.6 point out that for the first

semester the institution must put in a minimum of 90 days to enable the students to appear for the examination. It is pointed out that considering the period now available, it would not be possible to complete the said terms. Apart from that, on behalf of the Respondent University learned counsel points out that there are 9 papers of 100 marks each and two papers of 50 marks each all together 11 papers which had been put in.

7. On behalf of the Respondent State, Learned Counsel has drawn our attention to the judgment of the Apex Court in **Medical Council of India v. Madhu Singh** (2002) 7 SCC 258. We may only advert **to** what the Apex Court has noted in paragraph 22 of the judgment:

> "It is to be noted that if any student is admitted after commencement of the course it would be against the intended objects of fixing a time schedule. In fact, as the factual position goes to show, the inevitable result is increase in the number of seats for the next session to accommodate the students who are admitted

after commencement of the course for the relevant session. Though, it was pleaded by learned counsel for Respondent 1 that with the object of preventing loss to the national exchequer such admissions should be permitted, we are of the view that the same cannot be a ground to permit midstream admissions which would be against the spirit of governing statutes. His suggestion that extra classes can be taken is also not acceptable. The time schedule is fixed by taking into consideration the capacity of the student to study and the appropriate spacing of classes. The students also need rest and the continuous taking of classes with the object of fulfilling the requisite number of days would be harmful to the students' physical and mental capacity to study."

8. Considering what is set out above, and the fact that ultimately it is Respondent No.3 and Respondent No.6 who have to decide the matter of grant of approval and matter of affiliation, it

would not be possible for this Court to issue any directions to the statutory bodies which will be contrary to the statutory provisions by which they are governed. No Court including a Court exercising its extraordinary jurisdiction will issue any directions or grant any relief which is contrary to the statute and more so where there is no discretion in the statutory authority. It may be mentioned that Respondent No.6 has specifically stated through their counsel that they go by the directions in the matter of the minimum attendance which a student must put in as set out by Respondent No.3.

9. We may, however, note one unusual aspect of the matter. The admission process, spills over a substantially long period. The judgment of this Court in Writ Petition 3916 of 2001 was to enable certainty so that the admission process would go on undisturbed and that the seats available are filled in as per procedure laid down. In other words, the judgment proceeded on the footing that there must be certainty in the admission process and in that context observed that the intake capacity would be as notified by Respondent No.3 as on 30th June of

each academic year. Respondent No.3, however, as can be seen in the recent case issued a notice in July inviting applications upto August 16. The effect of such notice is that Respondent No.3 having given up its initial calender was willing to consider granting permission/ approval to new institutions and/or possibly in some cases increasing the intake. One of the reasons Respondent No.3 found itself unable or not in a position to consider proposal was in view of the judgment of this Court in Writ Petition 3196 of 2001 which has fixed the intake as of 30th June, 2005. It is only on account of this aspect of the matter and with a view that students from this State do not suffer, we are inclined to provide for certain contingencies as have occurred in the present case, without departing from the cut off date for intake as set down in the judgment of this Court on 17th September, 2001 in Writ Petition 3196 of 2001.

10. In the light of that, the Petition can be disposed of by issuing the following directions:

i) The State Government will consider the

intake capacity as on 30th June, 2005 to commence the process for filling in seats subject to what is set out hereunder;

ii) If before the last date of the admission/ counselling process, AICTE increases the intake of existing institutions or grants permission for new colleges, the State Government will take into consideration such additional seats and take steps to fill in these seats from amongst students already on their list and without interfering with the admission process already completed;

iii) This would, however, be subject to the condition that such institutions must have affiliation in terms directed by Respondent No.3 and the institutional students are in a position to complete the necessary number of days for appearing for the examination in terms fixed by Respondent No.3 as followed by Respondent No.6.

iv) It is made clear that those who have

already been admitted before the increased intake or approval by Respondent No.3 by granting approval of new institutions or additional intake will not be entitled to apply nor will the State consider their applications for admission in the new college where approval has been granted or intake increased.

Rule made absolute accordingly. There shall be no order as to costs.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)